



CORPORATE FAILURE TO PREVENT FRAUD

Economic Crime and Corporate Transparency Act 2023 (ECCTA)

BACKGROUND

The new corporate 'Failure to Prevent Fraud' offence under the Economic Crime and Corporate Transparency Act 2023 (ECCTA) will come into effect on 1 September 2025. This impacts UK and non-UK based organisations (where there is a link to the UK) and represents a significant expansion of corporate criminal liability. General Counsel, Chief Legal Officers and senior compliance professionals should be taking steps now to assess risk exposure and readiness.

OFFENCE AND DEFENCE

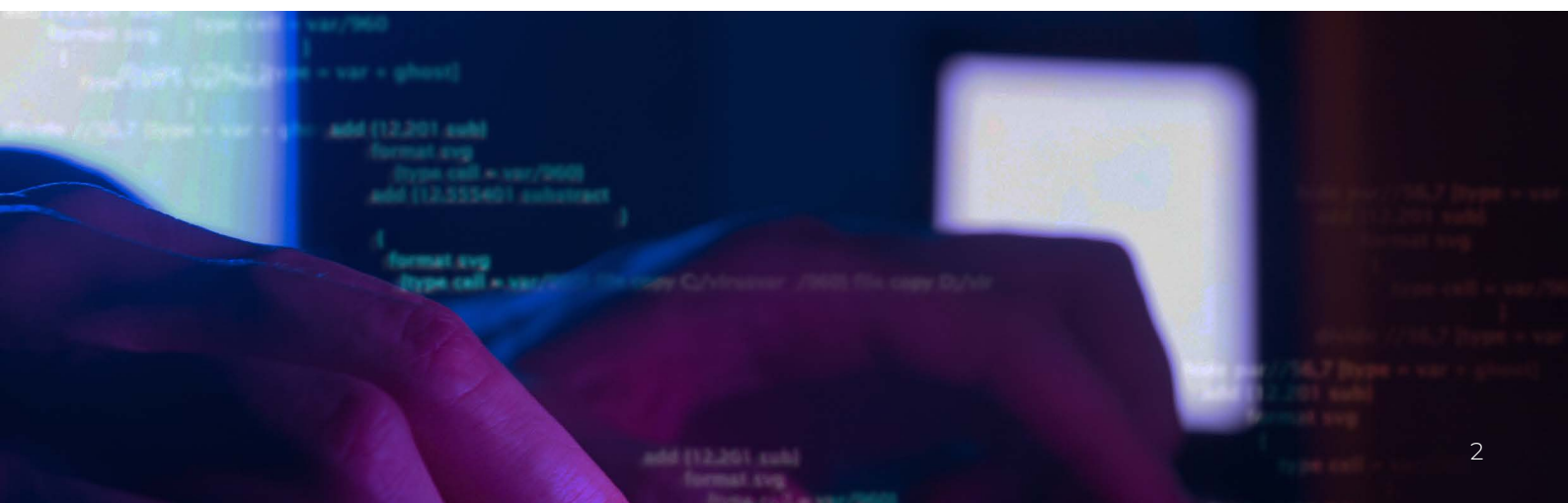
Comparable to Corporate Failure to Prevent offences under the UK Bribery Act 2010 (UKBA) and Criminal Finances Act 2017 (CFA), a "large organisation" commits an offence if an associated person (employee, agent, subsidiary, etc.) commits a specified fraud offence for the organisation's benefit. This is a strict liability offence and there is no need to prove senior management knowledge or involvement. Organisations face punitive financial penalties and reputational damage if the offence is proven. The only defence is to demonstrate "reasonable prevention procedures".

WHO IS CAUGHT?

The offence applies to companies, partnerships and LLPs meeting two of the following:

- ✱ £36 million+ turnover
- ✱ £18 million+ balance sheet
- ✱ 250+ employees

This includes UK subsidiaries of overseas parent entities.



CONSIDERATIONS FOR 'OUT-OF-SCOPE' COMPANIES

Even if your organisation is not directly caught by the offence, you may still be indirectly impacted:

- * As part of the supply chain of a large company
- * Subject to new contractual anti-fraud provisions
- * Required to demonstrate adequate anti-fraud procedures
- * At risk of reputational or commercial fallout from associated fraud

ECCTA will therefore drive compliance standards across the market and not just within large corporates.

GOVERNMENT GUIDANCE: REASONABLE PROCEDURES

The UK government's guidance is clear: existing anti-bribery or tax evasion policies alone will not suffice. While financial crime risks can and should be assessed holistically, organisations must adopt a fraud-specific, risk-based approach to rely on the "reasonable procedures" defence under ECCTA.

This approach should align with the government's six guiding principles:

1. Top level commitment
2. Risk assessment
3. Proportionate risk-based prevention procedures
4. Due diligence
5. Communication (including training)
6. Monitoring and review

Failure to evidence these principles leaves organisations exposed - not just legally, but reputationally and commercially.

OUR EXPERTISE

Spencer West supports clients across fraud, bribery, tax evasion and broader corporate crime risk management. We offer a 1-hour briefing session on relevant 'corporate risk and response' in order help legal and compliance teams focus on immediate priorities and where we can offer most value within your budget. Our advice is practical, modular and client focused with a suite of 'key principles led' services including:

- * Commitment and communication planning
- * Tailored impact and risk assessments
- * Gap analysis of existing risk controls
- * Designing and updating policies, protocols, procedures and governance frameworks
- * Due diligence on "associated persons" and other relevant parties
- * Requisite training (in person, remotely and via e-learning) and refresher sessions
- * Monitoring plan and review timelines
- * Undertaking broader compliance reviews and internal investigations where required
- * Self-reporting, resisting enforcement action and executing crisis and defence strategies
- * Proactively managing and resolving connected commercial disputes risk

NEXT STEPS

Our objective is to provide proactive prevention support before reactive defence services are necessary. Whether directly or indirectly impacted, organisations should consider their exposure and prepare before the offence comes into effect on 1 September 2025.

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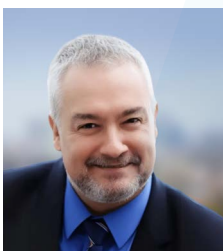
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